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22                  **UNITED STATES DISTRICT COURT**  
23                  **NORTHERN DISTRICT OF CALIFORNIA**

24                  Gor Gevorkyan on behalf of himself and all  
25                  others similarly situated,

26                  Plaintiff,

27                  vs.

28                  Bitmain, Inc., Bitmain Technologies, Ltd.  
29                  and DOES 1 to 10,

30                  Defendants.

31                  **THE MARLBOROUGH LAW FIRM, P.C.**

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38                  Case Number: 3:18-cv-07004-JD

39                  **PLAINTIFF'S MEMORANDUM IN**  
40                  **OPPOSITION TO BITMAIN**  
41                  **TECHNOLOGIES, LTD.'S MOTION TO**  
42                  **DISMISS AND MOTION TO STRIKE**  
43                  **CLASS ALLEGATIONS OR, IN THE**  
44                  **ALTERNATIVE, REQUEST FOR**  
45                  **LEAVE TO TAKE JURISDICTIONAL**  
46                  **DISCOVERY**

47                  Date:         December 19, 2019  
48                  Time:         10:00 a.m.  
49                  Judge:         Hon. Judge James Donato

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1 Plaintiff Gor Gevorkyan (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, by and through his counsel, respectfully submits this memorandum of law in opposition  
3 to Defendant Bitmain Technologies, Ltd.’s (“Bitmain” or the “Company”) Motion to Dismiss for  
4 lack of personal jurisdiction and to strike Plaintiff’s nationwide class allegations (“MTD”).

5 **I. INTRODUCTION**

6 Plaintiff’s First Amended Complaint (“FAC”) alleges that Bitmain shipped its ASIC  
7 devices to customers in California with a default configuration that mined cryptocurrency in  
8 California using its customers’ electricity, generated from California power companies, and using  
9 customers’ California internet service provided by California internet providers, for Bitmain’s  
10 benefit rather than the California customers who rightfully owned those devices. Like the ancient  
11 Greek soldiers smuggled past the gates of Troy in a wooden horse, Bitmain delivered ASIC  
12 devices into California with default configuration settings that were set to exploit Bitmain’s  
13 recipients in California (hereafter, “Bitmain’s Trojan Horse Scheme”). Moreover, Bitmain  
14 engaged in what it refers to as “secret mining” practices by intentionally using ASIC devices  
15 purchased by Plaintiff for its own financial benefit before shipping those devices to California  
16 (hereafter, Bitmain’s “Secret Mining Scheme”).

17 Specific jurisdiction is maintained based on Bitmain’s extensive marketing, advertising,  
18 sales, and service of its ASIC devices in the State of California. Defendant Bitmain proudly touts  
19 its California sales service and marketing operations to Bitmain’s current and future customers on  
20 its website, on its social media platforms (including Twitter, Facebook, YouTube and on its own  
21 blog), and at a recent California Crypto Mining Forum that it sponsored in Santa Clara,  
22 California, a few miles from Bitmain’s San Jose sales office. Its San Jose sales office serves as the  
23 central hub for Bitmain’s North, Central, and South America (“NCSA”) sales network. A top  
24 Bitmain executive and speaker at Bitmain’s California Crypto Mining Forum works in San Jose,  
25 and the company actively and publicly recruits Sales Specialists to work at its San Jose sales  
26 office to facilitate its online sales of ASIC devices. Moreover, the Company promotes the sale of  
27 its ASIC devices to customers in the United States by touting the convenience of its ASIC device  
28 repair center in Fremont, California.

1 Bitmain's substantial, continuous, and systematic contacts with California also subject  
 2 Bitmain to general jurisdiction in this forum. Therefore, it is appropriate for Bitmain to be haled  
 3 into court in California to answer for its activities here, and to treat California as Bitmain's home  
 4 for the purposes of general jurisdiction.

5 Finally, the Court should deny Bitmain's request that the Court strike Plaintiff's  
 6 nationwide class allegations. Bitmain relies on *Bristol-Myers Squibb Co. v. Superior*, 137 S. Ct.  
 7 1773 (2017) which is factually inapposite and does not apply to class actions.

8 **II. RELEVANT FACTS**

9 **A. The Parties**

10 This is a proposed class action against Defendant Bitmain, a corporation internationally  
 11 headquartered in Beijing, China, which maintains its United States sales headquarters in San Jose,  
 12 California.<sup>1</sup> Bitmain manufactures and sells Application Specific Integrated Circuit or "ASIC"  
 13 devices under the Antminer brand name, which are used by Bitmain and its customers for mining  
 14 cryptocurrency in California and throughout the United States.<sup>2</sup> Bitmain sells ASIC devices on its  
 15 highly interactive website, from which California customers log in, place orders, check order  
 16 status, track shipping, calculate shipping costs, receive product support, create repair tickets,  
 17 engage in online chat with sales and support specialists, and complete interactive customer  
 18 satisfaction surveys. *See* Marlborough Declaration, Exh. 3, Bitmain Support Webpages, available  
 19 at <https://service.bitmain.com/support/contact> and pages linked thereto.

20 Plaintiff is a California customer who purchased several Bitmain ASIC devices from the  
 21 State of California, for the purpose of mining cryptocurrency in California. *See* Declaration of  
 22

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23 <sup>1</sup> *See* Declaration of Christopher Marlborough ("Marlborough Decl."), Exh. 1, Bitmain.com  
 24 Contact Us webpage available at <https://www.bitmain.com/contact>. *See also* Marlborough Decl.,  
 25 Exh. 2, Bitmain Technologies, Ltd. ad for sales position in San Jose, at 2 (noting that Bitmain  
 Technologies, Limited [] has offices in ... San Francisco").

26 <sup>2</sup> Defendant Bitmain suggests that Plaintiffs will try to conflate the California contacts of its sister  
 27 corporation, Bitmain, Inc., a research and development company incorporated in California, which  
 Bitmain admits is not involved with the sales and service of ASIC devices. *See* Liu Decl. at ¶ 19.  
 28 However, Plaintiff relies only on the California contacts of Defendant Bitmain concerning the sales  
 and support of its ASIC devices, rather than the R&D activities of non-defendant Bitmain, Inc.

Gor Gevorkyan filed herewith (“Gevoryan Decl.”) at ¶¶ 2-4. Plaintiff purchased numerous ASIC devices from Burbank, California both directly from Bitmain through its highly interactive website, and from a third-party. *See Id.*, ¶ 3-4. The ASIC devices he purchased directly from Bitmain were delivered to him in California approximately three months after placing each of his orders. *Id.*, ¶ 5. Plaintiff received those ASIC devices in poor and used condition. *Id.* He observed that the devices looked worn out and had dust all over them, along with some dents and scrapes. *Id.* Plaintiff set up and used the ASIC devices to mine cryptocurrency in California. *See Id.*, ¶ 6. All of the Bitmain ASIC devices he purchased, including those acquired from a third-party reseller, were preconfigured to deliver cryptocurrency to Bitmain during the extensive setup process. *See Id.*, ¶ 9. During this time, Bitmain derived benefit from the use of Plaintiff’s ASIC devices in California while requiring him to pay substantial electricity costs to his local power companies and internet service providers. *See Id.*, ¶¶ 7-11. Several of the devices were defective, most likely due to the harsh conditions under which Bitmain used the devices for its own benefit after the sale to Plaintiff. *See Id.*, ¶¶ 6, 12. When Plaintiff contacted Bitmain’s customer support in the United States about the defective devices, he was instructed to keep them running for several days. *See Id.*, ¶ 13. During that time, the devices mined cryptocurrency for Bitmain, not Plaintiff. *Id.* Like Bitmain’s other customers in the United States, Plaintiff fell prey to Bitmain’s fraudulent Secret Mining Scheme after his purchases and prior to deliveries of the devices, and Bitmain’s fraudulent Trojan Horse Scheme after Bitmain delivered the devices to him.

## **B. Plaintiff’s Claims**

The FAC includes claims for unjust enrichment, conversion and trespass to chattel on behalf of a nationwide class of purchasers of Bitmain’s ASIC devices. FAC at ¶¶ 81-91. The FAC also asserts claims for violations of the unfair and fraudulent prongs of the California Unfair Competition Law on behalf of a subclass of California purchasers of Bitmain’s ASIC devices (the “California Subclass”). *See Id.* at ¶¶ 92-116. The claims concern both Bitmain’s Secret Mining Scheme and Bitmain’s Trojan Horse Scheme.

First, with respect to Bitmain’s Secret Mining Scheme, Bitmain extracts the value from new ASIC devices by delaying shipment of those products to its customers in California and

1 throughout the United States and by using the devices purchased by its customers to mine  
 2 cryptocurrency for itself during the window of time when the devices are capable of generating  
 3 the most income.<sup>3</sup> Bitmain refers to this practice as “secret mining.”

4 ‘Secret mining’ is a practice whereby an ASIC manufacturer may mine with newly  
 5 developed equipment prior to selling or distributing such equipment to customers [and]  
 6 has been criticized as conferring an unfair market advantage to ASIC manufacturers  
 over individual community member miners.<sup>4</sup>

7 Second, through Bitmain’s Trojan Horse Scheme, the Company continued to use its  
 8 customer-purchased ASIC devices to mine cryptocurrency for itself after delivery to Plaintiff and  
 9 other customers in California. *See* FAC at ¶¶ 54-61. Until approximately September 2015,  
 10 Bitmain maintained a lawful practice by which its customers’ newly delivered ASIC devices  
 11 started in low energy consumption mode and contained no preconfigured setting to mine  
 12 cryptocurrency for anyone. *Id.* at ¶ 58. The customer then configured the devices to deliver  
 13 cryptocurrency to the customers’ cryptocurrency account, at which time the ASIC devices would  
 14 boot up in high energy consumption mode, which is necessary to mine virtual currency. *Id.*

15 In or around September 2015, Bitmain changed that practice so that the devices started in  
 16 high energy consumption mode. *Id.* at ¶ 59. At the same time, Bitmain changed the default  
 17 configuration for its ASIC devices to ensure that the devices mined cryptocurrency not for its  
 18 customers, but for its customers’ largest competitor – Bitmain *itself*. *Id.* at ¶ 60. Bitmain now  
 19 requires its customers to pay the local power companies for the substantial electricity  
 20 consumption costs incurred during the configuration period, and exploits its customers’ internet  
 21 service while the ASIC devices are mining cryptocurrency for Bitmain in California. *Id.* at 61.

### 22 C. Bitmain’s Substantial Contacts with California

23 Bitmain argues that the Court lacks personal jurisdiction over the Company because it is a  
 24 foreign corporation whose only purported contact with California is a website from which  
 25

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26 <sup>3</sup> For an explanation of the economics relating to cryptocurrency mining, *see* FAC at ¶¶16-38.  
 27 <sup>4</sup> See Marlborough Decl., Exh. 4, Transparency Policy for Shipping and Mining Practices, dated  
 28 July 25, 2018, at 2; available at <https://blog.bitmain.com/en/transparency-policy-shipping-mining-practices/> (viewed on October 24, 2019).

1 California customers can order products. See MTD at 3. Bitmain, however, misleads this Court in  
 2 an attempt to conceal the truth about its substantial presence and ongoing product sales activities  
 3 in California.

4 Bitmain falsely maintains that it has no employees and no office in California.<sup>5</sup> Indeed,  
 5 Bitmain maintains its NCSA sales office and has employees in San Jose, California. The  
 6 Company publicly lists its San Jose sales office on its website, on social media and in its  
 7 promotional material relating to its continued expansion into the United States market, which it  
 8 recently described as a “key market[] for its overseas business.”<sup>6</sup> Indeed, on Bitmain’s website,  
 9 the very same website from which customers place their orders for the company’s ASIC devices,  
 10 the Company directs customers to its NCSA sales office in San Jose at the following address: 300  
 11 Park Ave, STE300, San Jose, CA 95110, USA, Email: sales.ncsa@bitmain.com<sup>7</sup> Bitmain also  
 12 provides a tour of its NCSA San Jose sales office and lists its NCSA sales e-mail address in a  
 13 Youtube video with the following caption:

14 Here’s a sneak peek into what goes on in Bitmain and ***our office in San Jose, California!*** A company that offers you innovative brands such as Antminer and  
 15 AntBox, taking cryptocurrency mining to greater heights!” (emphasis added).<sup>8</sup>

16 Bitmain falsely maintains that it has no employees in California, and that it does not  
 17 maintain sales or service networks in California. See MTD at 1 (“None of Bitmain’s employees  
 18 resides in California or works here”); see Liu Decl. at ¶ 6 (“Bitmain does not operate sales or  
 19 service networks within the State of California”). Bitmain indeed has employees in California,

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21 <sup>5</sup> See Liu Decl. at ¶¶ 6-7 (“Bitmain does not own, use, lease, or possess any real estate in the state  
 22 of California, nor does it maintain a place of business in the State of California.”); see also Bitmain  
 MTD at 1:12-13 (“None of Bitmain’s employees resides in California or works here.”).

23 <sup>6</sup> See Marlborough Decl. Exh., 1, Bitmain Website Contact Us page at 3 (listing the San Jose Sales  
 24 office address alongside the email address [ncsa.sales@bitmain.com](mailto:ncsa.sales@bitmain.com)); Marlborough Decl. Exh. 2,  
 LinkedIn job posting at 1 (seeking Sales Specialists for the San Jose office), 2 (identifying Bitmain  
 25 office in San Francisco); Marlborough Declaration, Exh. 5, Application Proof of Bitmain to Hong  
 Kong Stock Exchange at 126 (identifying United States as key market); Marlborough Declaration,  
 Exh. 6, Bitmain YouTube Video Screenshots: A Look Inside Bitmain at .pdf page 4 (disclosing  
 26 San Jose sales office address and [ncsa.sales@bitmain.com](mailto:ncsa.sales@bitmain.com) email address at end of video).

27 <sup>7</sup> See Marlborough Decl., Exh. 1, Bitmain Website: “Contact Us” Page.

28 <sup>8</sup> See Marlborough Declaration, Exh. 6, Bitmain YouTube Video Screenshots: A Look Inside  
 Bitmain at .pdf page 4, available at [https://www.youtube.com/watch?v=Xaa\\_-jQ4NvM](https://www.youtube.com/watch?v=Xaa_-jQ4NvM).

1 and those employees maintain Bitmain’s sales and service networks in California for the entire  
 2 NCA region. Bitmain’s LinkedIn.com Sales Specialists job posting reveals the Company’s  
 3 recruitment activities for its San Jose sales office. *See Marlborough Decl.* Exh. 2 (“Bitmain  
 4 Technologies is looking for a sales specialist to join US sales team, and support Bitmain sales  
 5 team’s development oversea.”). The job responsibilities for the San Jose Specialists include: 1)  
 6 communicating with customers about questions through e-mail and live chat; 2) “collecting on  
 7 unpaid orders, collecting customer demands, fulfilling orders and improving the customer service  
 8 experience;” 3) “cooperating with logistics department to help customers complete the custom  
 9 clearance and receive their parcels;” and, 4) managing and maintaining “Newegg and Amazon  
 10 seller portal.” *See Id.* at 1. Moreover, Peng Li, Bitmain’s International Sales Manager, indicates in  
 11 his LinkedIn.com profile that he works for Bitmain in San Jose, California. *See Marlborough*  
 12 *Decl.* Exh. 7, LinkedIn.com Peng Profile.

13 Further belying Bitmain’s claim that its California contacts are limited to the operation of  
 14 a website in China is the existence of Bitmain’s repair center for the NCSA region located in  
 15 Fremont, California. Bitmain’s Repair Guide directs California and United States customers to  
 16 return products to Bitmain’s repair site located in Fremont, California. *See Marlborough Decl.*,  
 17 Exh. 8, Bitmain Repair Guide at 4, located at <https://service.bitmain.com/support/guide>.  
 18 Bitmain also falsely claims that it does not target California residents in its marketing or  
 19 solicitations. *See Lui Decl.* at ¶¶ 13 – 14. However, the Company sends its top ASIC device sales  
 20 and marketing executives to California to promote and sell ASIC devices in California, and  
 21 spends large sums of money to host a conference to promote the sale of its ASIC devices in  
 22 California. For example, on August 31, 2019, Bitmain hosted a full day “California Crypto  
 23 Mining Forum.” *See Marlborough Decl.* Exh. 9, California Crypto Mining Forum, Agenda. The  
 24 event was held at the Shenzhen Bay Innovation Center, less than seven miles from Bitmain’s  
 25 sales office in San Jose, California. *See Marlborough Decl.*, Exh. 10, Antminer\_main Twitter  
 26 Posts at 3 of 3; Marlborough Decl. Exh. 11, Google Maps page (providing directions from  
 27 Bitmain San Jose NCSA Sales Office to Shenzhen Bay Innovation Center). The California Crypto  
 28 Mining Forum was heavily promoted on Bitmain’s social media outreach pages, including on

1 Facebook and Twitter. *See* Marlborough Decl., Exh. 10, Antminer\_main Twitter Posts. For  
 2 example, an August 16, 2019 Twitter Post from Bitmain reads:

3                   #CMF California Update: See the list of main speakers and topics focused on  
 4 cryptocurrency mining optimization. Register now at <https://bit.ly/312QGQ0> or  
 5 contact sales.ncsa@bitmain.com for further questions.

6 *Id.* at 2. The California Crypto Mining Forum featured presentations from Bitmain's top sales  
 7 executives, who were responsible for the sales of the same ASIC devices at issue in this case,  
 8 including Bitmain's Antminer Regional Sales Director (NCSA), Customer Service Manager,  
 9 Managing Director of Marketing Sales & Service, and Peng Li, Bitmain's Antminer US Sales  
 10 Manager. *See* Marlborough Decl. Exh. 9, California Crypto Mining Conference Agenda. Mr.  
 11 Peng, works for Bitmain in San Jose., a few miles from the conference site. *See* Marlborough  
 12 Decl., Exh. 7, LinkedIn.com, Peng Profile.

13                  The California Crypto Mining Forum was clearly directed at current and future Bitmain  
 14 customers in California who make up the prospective California subclass in this Action. Indeed,  
 15 Bitmain noted on its blog site that “[t]he California Crypto Mining Forum provided ... a special  
 16 focus on **how Bitmain provides enhanced services for current and future customers.**” *See*  
 17 Marlborough Decl., Exh. 12, Bitmain Blog, California Crypto Mining Forum (emphasis added).  
 18 Topics discussed at the California Crypto Mining Forum included: (1) Antminer Sales, Order and  
 19 Purchasing; (2) Antminer Aftersales Service; (3) Improving Mining Profits in the United States;  
 20 and, (4) Electricity Fees, Factors Influencing Mining Profits. *See* Marlborough Decl., Exh. 9,  
 21 California Crypto Mining Forum Agenda. On Bitmain's online Blog and in other press, Bitmain  
 22 touted its California Crypto Mining Forum as a huge success for the Company.<sup>9</sup> Nevertheless, in  
 23 its MTD, Bitmain deceives this Court by claiming that its only connection to California was its  
 24 operation of a website from Beijing, China.

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26                  <sup>9</sup> *See* Marlborough Decl. Exh. 10, Bitmain Twitter post, dated September 4, 2019 (“The 4th Crypto  
 27 Mining Forum was successfully held in California! Aligning with the new focus in providing  
 28 enhanced resource management to customers, the #CMF event delivered innovated speeches while  
 also pre-announcing an upcoming new miner.”).

1           **III.    LEGAL STANDARD**

2           When a party moves for dismissal under FRCP 12(b)(2), the plaintiff bears the burden of  
 3 proving that personal jurisdiction exists by a preponderance of the evidence. *See Pebble Beach*  
 4 *Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir.2006). When a district court decides a pretrial  
 5 personal jurisdiction motion without an evidentiary hearing, the plaintiff need only make a *prima*  
 6 *facie* showing of personal jurisdiction. *Ibid.* In deciding whether the plaintiff has proved a *prima*  
 7 *facie* case of personal jurisdiction, “the court resolves all disputed facts in favor of the plaintiff.”  
 8 *See ibid.; see also, Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)  
 9 (resolving dispute over statements contained in affidavits in plaintiff’s favor).

10          When determining the bounds of their jurisdiction, federal courts ordinarily follow state  
  11 law. *See* FRCP 4(k)(1)(A); *see also, Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014).  
  12 Generally, a determination of personal jurisdiction is a two-step inquiry, but because “California’s  
  13 long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under  
  14 the U.S. Constitution” (*Id.* at 125), the statutory inquiry necessarily merges with the constitutional  
  15 inquiry, and the two inquiries essentially become one. The question then is whether the defendant  
  16 has sufficient minimum contacts with the forum state such that “the maintenance of the suit does  
  17 not offend traditional notions of fair play and substantial justice.” *Id.* at 126 (citations omitted).

18          A defendant may be subject to two types of personal jurisdiction – specific and general.  
  19 Specific jurisdiction exists when the defendant’s conduct or contact within the forum state is  
  20 “connected to the suit.” *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408,  
  21 414 n.8 (1984). General jurisdiction exists where the defendant engages in “continuous and  
  22 systematic” contacts with the forum state, without regard to whether those contacts concern the  
  23 claims in the case. *See Id.* at 127.

24           **IV.    ARGUMENT**

25           **A.      Bitmain Is Subject to Specific Personal Jurisdiction**

26          *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) provides the general rule  
  27 where, as in California, the long arm statute extends as far as the Constitution will allow. The  
  28 forum state “does not exceed its powers under the Due Process Clause if it asserts personal

jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by customers in the forum State.” *World-Wide Volkswagen Corp.*, 444 U.S. at 298; *see also j2 Cloud Servs. V. Fax87*, 2017 U.S. Dist. LEXIS 64064, at \*\*10-11 (C.D. Cal. Apr. 27, 2017). Where, as here, the underlying action sounds in tort, the court employs the “Calder Effects Test” to determine whether a defendant has sufficient contacts with a forum state to be subject to specific jurisdiction. *See Calder v. Jones*, 465 U.S. 783 (1984). Under this test, “the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir.2006) (*en banc*) (citations omitted). Additionally, the Plaintiff must show that the exercise of jurisdiction comports with due process. *See Schwarzenegger*, 374 F.3d at 802. Under this test, there is no requirement that the defendant have any physical contacts with the forum state. *Id.* at 803.

#### **1. Bitmain’s Intentional Acts**

In this case, the “intentional acts” supporting specific jurisdiction are demonstrated by Defendant Bitmain’s Trojan Horse and Secret Mining Schemes, whereby Bitmain: (1) preconfigured the devices to mine cryptocurrency in California for the benefit of Bitmain, while leaving Plaintiff to pay the local California electricity and internet service expenses; (2) used Plaintiff’s devices to mine cryptocurrency for itself after he purchased them in California but before Bitmain delivered them to him; (3) provided logistical services from Sales Specialists in Bitmain’s San Jose NCSA sales office; and, (4) serviced often defective devices at Bitmain’s Fremont, California Repair Center.<sup>10</sup>

#### **2. Bitmain Expressly Aimed its Conduct at California Residents**

The second part of the *Calder*-effects test requires that the defendant’s conduct be expressly aimed at the forum. *See Pebble Beach*, 453 F.3d at 1156. First, California courts

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<sup>10</sup> See Marlborough Decl., Exh. 8, Bitmain.com Webpage US-CA Service Center Information, at 4. *See also* FAC at ¶ 50 (noting the harsh conditions in which Bitmain uses the ASIC devices on its mining farms which results in a high defect rate).

1 routinely hold that a defendant's maintenance of an online interactive website is sufficient to  
 2 establish express aiming where the claims relate to online orders from that website. *See Diaz v.*  
 3 *Bautista*, 2010 U.S. Dist. LEXIS 153018, at \*8 (C.D. Cal Oct. 20, 2010) ("doing business via an  
 4 interactive website with California citizens ... is sufficient to establish her purposeful direction to  
 5 the State of California."); *Vanity.com, Inc. v. Vanity Shop of Grand Forks, Inc.*, 2012 U.S. Dist.  
 6 LEXIS 144088, at \*10 (N.D. Cal. Oct. 4, 2012) ("Vanity Shop argues that merely selling to  
 7 California customers via its website is insufficient to confer personal jurisdiction. The Court  
 8 disagrees."); *Starlight Intl., Ltd. v. Lifeguard Health, LLC*, 2008 U.S. Dist. LEXIS 58927, at  
 9 \*\*13-14 (N.D. Cal. July 22, 2008) ("Courts within the Ninth Circuit have concluded [] that a  
 10 company's use of an interactive website may constitute purposeful availment of a forum.");  
 11 *Stomp, Inc. v. NeatO, LLC*, 61 F. Supp. 2d 1074, 1078 (C.D. Cal. 1999) (although the actual  
 12 number of sales to California citizens may be small, the act of engaging in internet commerce  
 13 with California citizens was sufficient to establish minimum contacts); *Tech Heads, Inc. v.*  
 14 *Desktop Serv. Ctr.*, 105 F. Supp. 2d 1142, 1151 (D. Or. 2000) (Defendant "intentionally availed  
 15 itself of jurisdiction" by "posting a highly commercial, highly interactive Web site on the World  
 16 Wide Web, engaging in Internet commerce with at least one [forum state] resident").

17 Bitmain relies on cases in which courts held that maintaining a "passive" website is not  
 18 sufficient to establish express aiming. *See* Bitmain MTD at 9, *citing Cybersell, Inc. v. Cybersell,*  
 19 *Inc.*, 130 F.3d 414 (9th Cir. 1997) (noting that a "passive website" is one which merely posts  
 20 information" and the distinction between passive websites and interactive websites which can be  
 21 sufficient to warrant the exercise of jurisdiction). In contrast to the "essentially passive" website  
 22 in *Cybersell*, Bitmain's highly commercial and interactive website allows customers to place  
 23 orders for ASIC devices online through the website, receive technical support, log in to their  
 24 account, review and modify orders, track shipping, obtain customs forms, engage in online chat  
 25 with sales and support specialists, and complete interactive customer satisfaction surveys. *See*  
 26 Marlborough Declaration, Exh. 3, Bitmain Support page.

27 Second, Bitmain employees in California facilitated customer orders in California and  
 28 throughout the United States by providing customer service, logistical, "custom clearance" services,

1 and live chat from San Jose, California. *See Marlborough Decl. Exh. 2, LinkIn.com Sales Specialist,*  
 2 *Job Posting for Bitmain Technologies, Ltd. at 1; Marlborough Decl., Exh. 1, Bitmain.com Contact*  
 3 *Us webpage.* Moreover, one of the Company's top sales executives works in the San Jose NCSA  
 4 *sales office. See Marlborough Decl., Exh. 7, LinkedIn.com, Peng Profile.* In addition, Bitmain  
 5 maintains its NCSA Repair Center for ASIC devices in Fremont, California. *See Marlborough Decl.*  
 6 *Exh. 8, Bitmain Repair Guide, at 4.*

7 Third, through its Trojan Horse Scheme, Bitmain shipped its used ASIC devices across the  
 8 United States border and into California, with default configuration settings designed to cause  
 9 economic harm to California customers from the moment they powered up the devices and  
 10 connected them to the internet. The devices mined cryptocurrency in California for the benefit of  
 11 Bitmain rather than Plaintiff and other California customers. The ASIC devices caused Plaintiff  
 12 and other California customers to incur charges to their local power companies in California.

13           **3.       *Bitmain Knowingly Caused Harm In California***

14       “The final element” under Calder—likely harm—requires that [a defendant’s] conduct  
 15 caused harm that it knew was likely to be suffered in the forum.” *Brayton Purcell LLP v.*  
 16 *Recordon & Recordon*, 606 F.3d 1124 at 1131 (9<sup>th</sup> Cir. 2010); *see also Wallach v. Johnson*, 2019  
 17 U.S. Dist. LEXIS 174272, at \*12 (D. Ariz. Oct. 7, 2019). Bitmain knowingly caused harm to  
 18 customers in the State of California. This element is satisfied when defendant’s intentional act has  
 19 “foreseeable effects” in the forum state. *See Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223  
 20 F.3d 1082, 1087 (9th Cir. 2000).

21       In this case it was entirely foreseeable to Bitmain that its conduct would cause harm to  
 22 California and its residents by: (1) causing substantial impairment to both the device’s  
 23 functionality and economic value through Defendant’s Secret Mining Scheme; and, (2) co-opting  
 24 of California customers’ ASIC devices located in California to mine cryptocurrency through the  
 25 Trojan Horse Scheme while using the customers’ local California-based electricity and internet  
 26 connections. Without question, all of these acts caused harm within the State of California  
 27 generally, and to Plaintiff and Bitmain’s California customers specifically.

28       ///

1                   **4. Personal Jurisdiction Over Bitmain is Constitutionally Reasonable**

2                   The final prong of the due process inquiry is intended to ensure that litigation “is not so  
 3                   gravely difficult and inconvenient’ that a party is unfairly at a ‘severe disadvantage’ in  
 4                   comparison to his opponent.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 at 478 (1985) citing  
 5                   *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972).

6                   Here, the only purported burden faced by Bitmain in litigating this case in California is  
 7                   that its international headquarters is in China. However, Bitmain maintains its United States sales  
 8                   office in San Jose, California, and a top Bitmain sales executives works in San Jose.<sup>11</sup> Indeed,  
 9                   Bitmain’s San Jose NCSA sales office is less than an hour’s drive from the Courthouse.<sup>12</sup>  
 10                  Plaintiff, on the other hand, has no connection to or presence in China and would face a heavy  
 11                  burden if he were forced to litigate this case in China. *See* Gevorkyan Decl. at ¶¶ 15, 17.

12                  **B. Bitmain Is Subject to General Jurisdiction**

13                  In *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the United States Supreme court noted  
 14                  that “a corporation’s operations in a forum other than its formal place of incorporation or  
 15                  principal place of business may be so substantial and of such a nature as to render the corporation  
 16                  at home in that State.” *Id.* at 761 n.19; *see also Goodyear Dunlop Tires Operations, S.A. v.*  
 17                  *Brown*, 564 U.S. 915 , 919 (2011) (finding a court may assert general jurisdiction over foreign  
 18                  (sister-state or foreign-country) corporations when their affiliations are sufficient to render them  
 19                  essentially at home in the forum state). Some examples of where a finding of general jurisdiction  
 20                  would ostensibly comport with due process include “marketing the product through a distributor  
 21                  who has agreed to serve as the sales agent in the forum State,” “efforts of the manufacturer or  
 22                  distributor to serve, directly or indirectly, the market for its product in other States,” having its  
 23                  largest distribution of its product in the forum State, *or* the “continuous[] and deliberate[]  
 24                  exploit[ation]” of the forum State’s market. *See, e.g., Daimler*, 134 S. Ct. at 755 n.7 (quoting  
 25                  *Asahi Metal Industry Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987) (emphasis added);

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27                  <sup>11</sup> See Marlborough Decl. Exhs. 1, Bitmain.com Contact Us page, and 7, Peng LinkedIn Profile.  
 28                  <sup>12</sup> See Marlborough Decl. Exh. 11, Google Maps (showing directions from Bitmain San Jose  
                         NCSA Sales Office to U.S. District Courthouse in San Francisco).

1       *World-wide Volkswagen*, 444 U.S. at 297 (1980); *Calder*, 465 U.S. at 789-90; *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780-81 (1984)). In this case, Bitmain has continuously and deliberately exploited California’s market, which serves as the central hub of Bitmain’s sales and service operations for two continents.

5              First, Bitmain admits on its website that its NCSA sales office is located in San Jose, and  
 6        it is the only United States office indicated on Bitmain’s Contact Us page. *See Marlborough Decl.*  
 7        Exh. 1, Bitmain Contact Webpage (including sales.NCSA@bitmain.com email address). Bitmain  
 8        also employs Sales Specialists and its NCSA Regional sales executive in the San Jose NCSA  
 9        sales office and has claimed to have an office in San Francisco. *See Marlborough Decl.*, Exh. 2,  
 10        LinkedIn.com Sales Specialist job posting.

11              Second, further evidence that Bitmain is at home in California is that its only repair center  
 12        in the U.S. is located in Fremont, California. *See Marlborough Decl.*, Exh. 8, Bitmain Repair  
 13        Guide, at 4. Indeed, Bitmain most likely set up shop for its sales and service activities in the heart  
 14        of Silicon Valley, often referred to as the “mecca of the technology industry,” because that is the  
 15        international center of activity for technology companies like Bitmain. Taking all of the foregoing  
 16        facts into consideration, Bitmain cannot in good faith stand on its argument that it is not “at  
 17        home” in California for purposes of general jurisdiction.

### 18              C.     **Bitmain’s Browsewrap Terms of Service are Unenforceable and Irrelevant**

19              In support of the motion to dismiss for lack of personal jurisdiction, Bitmain submitted a  
 20        copy of one of several browsewrap terms of service on its website, but produced no evidence that  
 21        Plaintiff ever assented to it. Indeed, he did not.<sup>13</sup> In *Nguyen v. Barnes & Noble Inc.*, 763 F.3d  
 22        1171, 1176 (9th Cir 2014), the Court held that such browsewrap agreements are unenforceable.  
 23        “Unlike a clickwrap agreement, a browsewrap agreement does not require the user to manifest  
 24        assent to the terms and conditions expressly a party instead gives his assent simply by using the  
 25        website.” (internal citations omitted). Moreover, Bitmain has not brought a motion to compel

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27              <sup>13</sup> See Gevorkyan Decl. at ¶ 14 (Plaintiff never consented to any of Bitmain’s terms of service);  
 28        *McGhee v. N. Am. Bancard, LLC*, 755 F App’x 718, 720 ) (9th Cir 2019) (“NAB did not make a  
 “prima facie” showing that McGhee assented to the User Agreement”).

1 arbitration. The terms of service Bitmain presented to the Court do not support Defendant's  
 2 argument that the Complaint should be dismissed for lack of personal jurisdiction.

3           **D. Plaintiff's Nationwide Class Allegations Should Not Be Stricken**

4           Defendant seeks to strike Plaintiff's nationwide class allegations, arguing that any  
 5 certified class should be limited to California residents. However, the request is premature as  
 6 such matters are more appropriate for determination at the class certification stage. *See*  
 7 *Grodzitsky v. Am. Honda Motor Co.*, 2013 U.S. Dist. LEXIS 33387, \*1, 10 (C.D. Cal. Feb. 19,  
 8 2013) (denying motion to strike nationwide class allegations, noting that “[d]efendant has yet to  
 9 file an answer and discovery has not yet begun; given the early stage of the proceedings . . . it is  
 10 premature to determine if this matter should proceed as a class action.”). *See also Clancy v. The*  
 11 *Bromley Tea Co.*, 308 F.R.D. 564, at 572 (N.D. Cal. 2013); *Valencia v. Volkswagen Group of*  
 12 *America, Inc.*, 2015 U.S. Dist. LEXIS 105545, at \*1 (N.D. Cal. Aug. 11, 2015). Any doubts as to  
 13 whether the class allegations should be stricken at this stage should be resolved in Plaintiff's  
 14 favor. *See In re Charles Schwab Corp. Secur. Litig.*, 257 F.R.D. 534, 562 (N.D. Cal. 2009) ([I]f  
 15 there is any doubt whether the portion to be stricken might bear on an issue in the litigation, the  
 16 court should deny the motion.”).

17           Bitmain's argument that the Supreme Court's decision in *Bristol-Myers Squibb Co. v.*  
 18 *Superior*, 137 S. Ct. 1773 (2017) requires the Court to strike Plaintiff's nationwide class  
 19 allegations has no merit. First, *Bristol Myers* was not a prospective class action and the case does  
 20 not extend to class actions. *See Fitzhenry-Russell v. Dr. Pepper Snapple Group*, 2017 U.S. Dist.  
 21 LEXIS 155654, at \*15 (N.D. Cal. Sep. 22, 2017) (“For all of its arguments, Dr. Pepper has not  
 22 presented the Court with persuasive argument—much less binding law—compelling the  
 23 extension of *Bristol-Myers* to class actions.”). Justice Sonia Sotomayor squarely addressed this  
 24 question in her dissent in *Bristol-Myers*. Specifically, noting: “the Court today does not confront  
 25 the question whether its opinion here would also apply to a class action in which a plaintiff  
 26 injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were  
 27 injured there.” *See Bristol-Meyers*, 137 S. Ct. at 1789 n.4. Indeed, a leading treatise states that  
 28

1 most courts “have concluded that *Bristol-Myers* does not apply to class actions.” *See McLaughlin*  
 2 *on Class Actions*, § 2.44 n. 5 (collecting cases).

3 The *Bristol Myers* case concerned a mass tort action where many of the named plaintiffs’  
 4 claims were not connected to the forum state. Class actions are fundamentally different from mass  
 5 torts actions, like the one at issue in *Bristol Myers*. This case has only one named plaintiff and his  
 6 claims are clearly connected to the State of California. In a class action, like this one, the claims  
 7 of unnamed class members are “irrelevant to the question of specific jurisdiction.” *AM Trust v.*  
 8 *UBS AG*, 78 F. Supp. 3d 977, 986 (N.D. Cal. 2015), *aff’d*, 681 F. App’x 587 (9th Cir. 2017); *see*  
 9 *also Cabrera v. Bayer Healthcare, LLC*, No. LACV1708525JAKJPRX, 2019 WL 1146828, at \*8  
 10 (C.D. Cal. Mar. 6, 2019) (same); *Senne v. Kansas City Royals Baseball Corp.*, 105 F. Supp. 3d  
 11 981, 1022 (N.D. Cal. 2015); *Al Haj v. Pfizer Inc.*, 338 F. Supp. 3d 815, 818-22 (N.D. Ill. 2018)  
 12 (denying motion to strike nationwide class allegations); *Curran v. Bayer Healthcare LLC*, 2019  
 13 U.S. Dist. LEXIS 15362, at \*9-10 (ND Ill Jan. 31, 2019) (same); *Fitzhenry—Russell*, 2017 U.S.  
 14 Dist. LEXIS 155654, 2017 WL 4224723, at \*5. In *Al Haj*, the court explained that to apply  
 15 *Bristol-Myers* to class actions would be to hold that “[a]lthough absent class members are *not*  
 16 parties for purposes of diversity of citizenship, amount in controversy, Article III standing, and  
 17 venue, they *are* parties for purposes of personal jurisdiction over the defendant.” 338 F. Supp. 3d  
 18 815 at 820. The court concluded “[t]hat cannot be right.” *See Id.*

19 Finally, in this case, even the claims of the unnamed class members are connected to  
 20 California because Bitmain facilitates sales and provides service and support to customers  
 21 throughout the United States from both its San Jose NCSA sales office and Fremont NCSA repair  
 22 center. Therefore, Bitmain’s request to strike Plaintiff’s class allegations should be denied.

23 **V. CONCLUSION**

24 For the foregoing reasons, the Court should deny Bitmain’s Motion in its entirety. If the  
 25 Court is inclined to grant Defendants’ Motion for lack of personal jurisdiction, Plaintiff  
 26 respectfully requests that he be afforded the opportunity to take jurisdictional discovery and/or  
 27 amend his complaint to address the Court’s concerns.

28 ///

1 Dated: October 25, 2019

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